IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP NO.7975 of 1991

DATE OF DECISION :19.10.2006

Mohan Singh

.....PETITIONER

VERSUS

The State of Punjab and others

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE M.M.S.BEDI

PRESENT: Mr. Ashok Sharma Nabhewala, Advocate for petitioner.

Mr.Pawan Sharda, AAG, Punjab for the respondents.

M.M.S.BEDI,J.

The petitioner has filed this writ petition under Article 226 of the Constitution challenging the validity of impugned order dated 20.12.1990 (Annexure P-14) dismissing him from service as Sub Inspector, Food and Supply Department and also order dated 5.4.1991 (Annexure P-17) passed by the Appellate Authority whereby his appeal against the dismissal order has been dismissed.

The petitioner while posted as Sub Inspector in the Food and Supplies Department, Punjab at P.R.Centre Machhiwara under Inspector Sajjan Singh at godown No.5 on the allegation of shortage of 74 bags of wheat was served with a show cause notice by respondent No.3, Deputy Director, Food and Supplies Department, Patiala Division,Punjab vide letter dated 27.12.1987 (P-2). The petitioner filed his reply vide letter dated

16.1.1984 submitting that there had not been any shortage of bags as the counting of the bags had not been conducted in accordance with the procedure of inspection as prescribed as per P.R.Manual. He was suspended on 21.6.1985 and served with a charge sheet dated 14.10.1985 (P-4) on the allegation of shortage of 74 bags of wheat from godown No.5 and for embezzlement of 211.88 quintals of wheat. It was also alleged therein that he was negligent in sending the requisite documents in time. He submitted a reply vide Annexure P-5. Not satisfied with the reply of the petitioner, respondent No.3 Shri Fauja Singh, Joint Director (Administration) was appointed as Inquiry Officer. District Food and Supplies Officer, Samrala and A.F.S.O.Machhiwara were examined by the Inquiry Officer in the absence of the petitioner and he was not allowed to cross-examine the witnesses. Ram Kishan was examined by the Presenting Officer but the petitioner was not allowed to cross-examine him despite his insistence. He was not supplied the relevant documents during the inquiry, which were relied upon by the Department and the Inquiry Officer submitted the Inquiry Report.

It is an admitted fact that vide letter dated 30.12.1986 (Annexure P-7) the charge sheet against the petitioner was withdrawn as some other officials had also been found involved and a second charge sheet dated 31.3.1987 (Annexure P-8) was served upon him. The petitioner submitted a detailed reply dated 3.6.1987 (Annexure P-9) raising the defence that he was deputed for Panchayat Election duty from 21.9.1983 to 30.9.1983 and the treatment in the godown was performed by Inspector Sajjan Singh in his absence. Regarding charge No.2 it was pleaded that it was Sajjan Singh Inspector who had prepared PR-86 and dispatched the

documents. Shri Fauja Singh, Joint Director (Quality Control) was appointed as Inquiry Officer. The petitioner claims that the Inquiry Officer had conducted the inquiry with predetermined mind, holding a bias against him. The request of the petitioner for preliminary report and other relevant documents vide applications dated 25.1.1988 (Annexures P-11 and 12) was declined. The report was submitted by the Inquiry Officer on 27.6.1990 holding the petitioner guilty and negligent on the charges levelled against him. The Inquiry Officer had also held Sajjan Singh guilty of negligence in performing his duties and for not sending document PR-86 in time. On the basis of the report of the Inquiry Officer dismissal order dated 20.12.1990 (Annexure P-14) was passed without issuing any show cause notice and without affording any opportunity of personal hearing to the petitioner. The Punishing Authority neither applied its mind while passing the dismissal order nor the inquiry report was supplied to the petitioner. The petitioner filed an appeal before respondent No.1 on 26.12.1990 vide Annexures P-15 and P-16, which was rejected on 5.4.1991 (Annexure P-17). He has challenged the dismissal order on the grounds that the preliminary inquiry report and other documents relied upon by the Inquiry Officer have not been supplied to him at any stage; he was not supplied the inquiry report before passing the dismissal order dated 20.12.1990 (Annexure P-14); the Inquiry Officer was biased towards him and had not afforded an adequate opportunity to him to defend the case; he was not allowed to take the assistance of the a legal practitioner in the departmental proceedings whereas the Presenting Officer as well as the Inquiry Officer were having legal background; there has been misreading of evidence by the Inquiry Officer; he is absolutely not responsible for any shortage as he was deputed

for election duty in Gram Panchayat Elections from 21.9.1983 to 30.9.1983.

In the written statement filed by the respondents the ground of challenge to the inquiry proceedings have been denied. However, it has been admitted that the Punishing Authority before passing the dismissal order dated 20.12.1990 (Annexure P-14) had not served any show cause notice to the petitioner. So far as the supply of inquiry report to the petitioner is concerned, the respondents have taken up the following plea in para 14 of the written statement:-

> ".....As regards the supply of Inquiry Report to the petitioner before passing the punishment order, it is submitted that the State Government circulated the instructions with reference to the supply of the inquiry report before passing the order. The said instructions could not have the retrospective effect. The respondents took action according to the prevailing practice before the issue of circular."

I have heard learned counsel for the parties and gone through the entire paper book and the inquiry file. It is apparent from the entire record that the report of Inquiry Officer neither was supplied to the petitioner nor any show cause notice was issued before passing impugned order 20.12.1990 (Annexure P-14). The plea taken in para 14 of the written statement is that the Punishing Authority was not legally required to serve the petitioner a show cause notice before passing the impugned order. It has also been pleaded in the said para, as reproduced above, that there was no requirement for supply of inquiry report to the petitioner before passing the order of punishment as the Government instructions were circulated subsequently. The instructions for supply of inquiry report before passing

the order of punishment by the Punishing Authority were not operative at the time of the passing of the impugned order (Annexure P1-4). Even the dismissal order (Annexure P-14) does not indicate that before relying upon the inquiry report it was furnished to the petitioner. The Constitutional Bench of the Hon'ble Supreme Court in the case of **Managing Director, ECIL, Hyderabad vs B.Karunkar and others (1993)4 Supreme Court Cases 727**, has held that when the Inquiry Officer is not disciplinary authority, the delinquent employee has a right to receive a copy of the Inquiry Officer's report before the Disciplinary Authority arrives at a conclusion with regard to the guilt or innocence of the employee with regard to the charges levelled against him. That right is a part of the employee's right to defend himself against the charges levelled against him. A denial of Inquiry Officer's report before the Disciplinary Authority takes its decision on the charges, is a denial of reasonable opportunity to the employee to prove his innocence and is a breach of principles of natural justice. Similar is the ratio of judgment of Hon'ble Supreme Court in **Union of India vs Mohd.Ramzan Khan (1991)1 SCC 588.** In **Karunakar's case (supra)** the Constitutional Bench has observed that even if the rules governing the disciplinary proceeding expressly prohibit the furnishing of the copy of the report, the delinquent employee will certainly have the benefit of the report of the Inquiry Officer before the Disciplinary Authority records its finding on the charges levelled against him. Following the ratio of **Karunakar's case (supra),** a Division Bench of this Court in **Jatinder Singh vs State of Haryana and others 2006(3) SCT 352,** while considering Rule 7.6 of the Haryana Civil Services (Punishment & Appeal)

Rules,1987 providing for furnishing a copy of Inquiry Report to the delinquent official at the stage of proposing punishment has been held to be deserving an amendment to be creasing out in accordance with the law laid down in **Mohd. Ramzan's case (supra),** as it provides for supply of copy of the Inquiry Report along with the final show cause notice.

In view of the above, the impugned order dated 20.12.1990 (Annexure P-14) and order dated 5.4.1991 (Annexure P-17) passed by the Appellate Authority are not sustainable as the impugned order has been passed without supplying the copy of the inquiry report to the petitioner. Accordingly, the writ petition is allowed and the aforementioned orders are quashed. The Punishing Authority will now be deemed to have supplied the copy of the report of the Inquiry held against the petitioner and proceeded in accordance with Rule 9(4) of the Punjab Civil Services (Punishment and Appeals) Rules,1970. As the writ petition is allowed and the termination order is set aside, the petitioner shall be reinstated in service but without any back wages and other service benefits and his reinstatement shall be solely for the purpose of completing the departmental proceedings. His entitlement to the service benefits, if any, shall be adjudicated upon by the authorities depending upon the result of the disciplinary proceedings. The entire process will be finalised within a period of six months from the date of receipt of a certified copy of the judgment.

October 19 ,2006 (M.M.S.BEDI)
TSM JUDGE